

MR E.W. BURTON #F02720 IMPROPER  
AP BOX 5265 SATEVA CA 93284  
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1           **MR. ADAIR:** MY LANGUAGE MAY NOT BE PERFECT  
2           JUST YET, BUT IN OTHER WORDS, TO MAKE IT CLEAR TO THE  
3           JURY THAT AS FAR AS MR. BURTON'S HONEST AND REASONABLE  
4           BELIEF, [REDACTED]  
5           HE WAS AWARE OF.

6           **THE COURT:** WELL, THAT'S FINE. ALTHOUGH AT  
7           THIS POINT I'M NOT SURE WE HAVE HIM BEING AWARE OF ANY  
8           OF THEM.

9           **MR. TROCHA:** CORRECT.

10          **THE COURT:** SO I'LL WAIT AND HEAR THE  
11          EVIDENCE.

12          **MR. ADAIR:** [REDACTED] IT'S  
13          JUST THAT THE JURY HASN'T BEEN ALLOWED TO HEAR ABOUT  
14          THEM YET.

15          **THE COURT:** UNTIL WE HAVE EVIDENCE THAT THE  
16          JURY HEARS OF HIS KNOWLEDGE OF PRIOR ACTS, THEN THAT'S  
17          NOT AN INSTRUCTION THAT WOULD WORK. SO WE NEED TO WAIT  
18          AND SEE WHAT, IF ANYTHING, EVIDENCE WE GET ON THAT SHOWS  
19          THAT HE'S WAS AWARE OF ANY OF THIS.

20          **MR. ADAIR:** OKAY.

21          **THE COURT:** AND AGAIN HIS STATEMENTS TO HIS  
22          MOM THAT HE WAS FEARFUL AREN'T THE WAY TO ESTABLISH IT,  
23          BECAUSE IT'S NOT GOING TO BE OFFERED FOR ITS TRUTH AS TO  
24          WHAT MR. THOMAS DID.

25          **MR. ADAIR:** [REDACTED]  
[REDACTED]

27          JUDGE GALLAGHER ASKED HIM IF HE WAS UNDER ANY DURESS  
28          BECAUSE OF THE THREATS THAT WERE MADE TO HIM, [REDACTED]

1 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 2 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 4 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 5 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 7 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 9 [REDACTED] HE'S NOT BEING CHARGED WITH ILLEGALLY  
 10 CARRYING A FIREARM. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 12 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 13 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

14 MR. ADAIR: BUT I THINK THE JURY SHOULD BE  
 15 INFORMED THAT IF SOMEBODY FEELS THAT THEY ARE IN GRAVE  
 16 DANGER, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 18 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

19 THE COURT: ALL RIGHT. WHAT'S YOUR RESPONSE  
 20 TO THAT?

21 MR. TROCHA: I DON'T THINK THE JURY NEEDS TO  
 22 KNOW THAT IT'S IRRELEVANT. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 23 [REDACTED], "A PERSON REASONABLY BELIEVED HE WAS IN GRAVE  
 24 DANGER," [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 25 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

26 THE COURT: WELL, HE HASN'T BEEN CHARGED WITH  
 27 ANY ILLEGAL FIREARM POSSESSION CRIMES. AND I DON'T  
 28 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
 29 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1           **MR. TROCHA:** NOT THAT I KNOW OF, NOR DO I KNOW  
2           WHAT THE VIDEO WOULD BE OF.

3           **THE COURT:** WELL, AT THE TIME OF TRIAL, IT'S A  
4           LITTLE LATE FOR DISCOVERY REQUEST. SO THAT SHOULD HAVE  
5           BEEN MADE BEFORE. YOU CAN CERTAINLY INQUIRE OF THE  
6           OFFICERS WHEN THEY'RE HERE IF THERE IS ANY VIDEOTAPE.

7           ALL RIGHT. I THINK THAT EXHAUSTS THE MOTIONS.  
8           **MR. TROCHA,** DID YOU HAVE ANYTHING ELSE?

9           **MR. TROCHA:** THERE WAS ONE THING, YOUR HONOR,  
10          AND THE 911 TAPES REMINDED ME. WE DO HAVE UNDER  
11          SUBPOENA THE DISPATCHER THAT MR. THOMAS WAS SPEAKING TO  
12          AT ~~THE TIME OF THE SHOOTING~~. AND I WAS REQUESTING --  
13          WELL, ~~I JUST WANT TO BRING IT UP AT PRETRIAL BECAUSE THERE MAY~~  
14          BE SOME HEARSAY ISSUES.

15          MY REQUEST IS TO HAVE HER TESTIFY INITIALLY  
16          THAT SHE WAS TALKING TO MR. BURTON -- EXCUSE ME -- TO  
17          ~~THE NATURE OF THE CALL; AND~~  
18          ~~FOR THE CALLER.~~ NOT FOR PURPOSES OF THE TRUTH OF  
19          WHAT THEY WERE TALKING ABOUT, BUT JUST TO ESTABLISH WHO

~~THAT SHE WAS TALKING ABOUT AT THE TIME OF THE SHOOTING~~  
21          INQUIRY IN OR THERE'S ACQUISITIONS MADE THAT MR. THOMAS  
22          AT THAT TIME WAS MAKING THREATS TO MR. BURTON WHEN THE  
23          ~~SHOOTING OCCURRED OR JUST PRIOR TO THE SHOOTING~~  
24          OCCURRING, I WOULD ASK THE COURT THEN TO ALLOW HER TO  
25          TESTIFY AS TO THE CONTENTS OF THE CONVERSATION TO  
26          DISPROVE THAT -- AS IT WOULD ALSO COME IN AS A  
27          CONTEMPORANEOUS STATEMENT TO EXPLAIN THE ACTION.

28          **THE COURT:** IS THIS SOMEBODY YOU'RE PLANNING

1 BELIEVE IS -- THE DECLARATION IN SUPPORT OF THE  
2 RESTRAINING ORDER THAT MR. BURTON GOT IS NOT IN EVIDENCE  
3 AT THIS TIME, BUT IN THAT IT DOES STATE THAT THOMAS HAD  
4 THREATENED TO KILL HIM.

5 THE COURT: WELL, IT SAYS THAT, [REDACTED]  
6 IN EVIDENCE. [REDACTED]  
[REDACTED]  
[REDACTED]

9 MR. ADAIR: UH-HUH.

10 THE COURT: [REDACTED]  
11 WOULD GIVE RISE TO A SELF-DEFENSE CLAIM, [REDACTED]  
12 ~~GOING TO BE THE NEW STATE TOO MUCH TIME~~ --

13 MR. TROCHA: I THINK --

14 THE COURT: -- THINKING ABOUT WHAT INSTRUCTION  
15 WILL APPLY UNTIL I KNOW WHAT THE DEFENSE IS, BUT I'LL  
16 MAKE IT AS A NOTE TO BE CONSIDERING. IF WE GET TO THE  
17 POINT WHERE I DECIDE THAT I WOULD INSTRUCT AN  
18 UNREASONABLE SELF-DEFENSE, BUT NOT THE FULL PACKAGE OF  
19 SELF-DEFENSE THEORY. THEN THE QUESTION WILL BE ARE  
20 THERE ANY ADDITIONAL INSTRUCTIONS THAT NEED TO BE PULLED  
21 OUT AND INCLUDED. [REDACTED]

22 MR. ADAIR: WELL, MY GOAL IS THAT ALL OF THE  
23 INSTRUCTIONS CONCERNING BOTH REASONABLE AND UNREASONABLE  
24 SELF-DEFENSE WILL BE NEEDED.

25 THE COURT: OKAY.  
[REDACTED]  
[REDACTED]  
27 ~~THAT AND THEN IF NOT DECIDE AGAINST ME, THEN THEY'D~~  
[REDACTED]

1 ~~WILL THEN ALSO BE ABLE TO GET A COPY TO MR. ADAIR.~~

2 MS. HANNAH: THANK YOU.

3 THE COURT: THEN WE FOUND SOME DOCUMENTS THAT CAME IN MORE  
4 RECENTLY, APPARENTLY, THAT WERE NOT IN THE COURT FILE. AND I

5 ~~IT DOES NOT SEEM LIKE THEY~~  
6 ~~AT LEAST THEY SEALED THEM WELL.~~  
7 AT LEAST THEY SEALED THEM WELL.

8 THESE ARE ALSO FROM SHARP MEMORIAL HOSPITAL. IT  
9 LOOKS LIKE IT'S IN RESPONSE TO A PEOPLE'S SUBPOENA. THESE MAY  
10 BE DUPLICATES.

11 MS. HANNAH: OKAY.

12 THE COURT: BUT IT'S, AGAIN, REFERRING TO MR. THOMAS.

13 MS. HANNAH: OKAY.

14 THE COURT: SO I'LL TURN THOSE, ALSO, OVER TO THE PEOPLE.

15 NOW, MR. ADAIR, WERE THERE SOME OTHER DOCUMENTS YOU  
16 WERE EXPECTING, AS WELL?

17 MR. ADAIR: WE HAD SUBPOENAED -- I THINK THERE WERE OTHER  
18 SUBPOENAS THAT WENT TO ANOTHER POLICE DEPARTMENT, THEIR RECORDS.

19 ~~THE COURT: ALL RIGHT. GO AHEAD, AND DO THAT. AND~~  
20 ~~CERTAINLY IF ANYTHING ELSE COMES IN. AND PERHAPS WE'LL MAKE~~  
21 ~~SURE IF THEY COME IN DOWNSTAIRS, THAT THEY'LL ALERT US TO IT SO~~  
22 ~~WE CAN CONTACT YOUR OFFICE AND LET YOU KNOW, SINCE WE HAVE A FEW~~  
23 ~~DAYS BEFORE THE ACTUAL TRIAL.~~  
24 THE COURT: ALL RIGHT. GO AHEAD, AND DO THAT. AND  
25 CERTAINLY IF ANYTHING ELSE COMES IN. AND PERHAPS WE'LL MAKE  
26 SURE IF THEY COME IN DOWNSTAIRS, THAT THEY'LL ALERT US TO IT SO  
WE CAN CONTACT YOUR OFFICE AND LET YOU KNOW, SINCE WE HAVE A FEW  
DAYS BEFORE THE ACTUAL TRIAL.

MR. ADAIR: THANK YOU, YOUR HONOR.

[REDACTED]

8                   **THE COURT:** [REDACTED]. THE JURY CAN JUST  
9       REMAIN. WE'LL STEP OUT IN THE HALLWAY FOR A MOMENT.

10                   (THE COURT, BOTH COUNSEL, AND THE COURT  
11       REPORTER EXIT THE COURTROOM.)

12                   (THE FOLLOWING PROCEEDINGS WERE HEARD AT  
13       SIDEBAR:)

14                   **MR. ADAIR:** YOUR HONOR, I AM CONCERNED ABOUT  
15       THE REMARK THAT I HAD OBJECTED TO BECAUSE BASICALLY IT  
16       INDICATES THAT IT'S BASICALLY CANCELING OUT THE RIGHT OF  
17       A PERSON WHO'S BEING ASSAULTED TO DEFEND THEMSELVES AND

[REDACTED]

19                   **THE COURT:** WHAT I WAS THINKING OF DOING IS --  
20       I'LL LET MR. TROCHA RESPOND -- I THINK THE ARGUMENT CAN  
21       BE VIEWED TWO WAYS, [REDACTED]  
22       AGAINST THE LAWS I READ. I WAS GOING TO PROPOSE  
23       REMINDING THE JURY THAT I GAVE THEM EXTENSIVE  
24       INSTRUCTIONS ON SELF-DEFENSE WITH -- [REDACTED]  
25       OF PRINCIPLES THAT APPLY. I'LL JUST GOING TO READ ONE  
26       TO THEM NOW BECAUSE OF SO MANY THEY HEARD YESTERDAY.  
27       AND THEN I'LL READ THAT INSTRUCTION AGAIN. HAVE IT  
28       RESTATED TO THEM.



1 MR. ADAIR: COULD I SEE IT AGAIN?

2 MR. TROCHA: THE PROBLEM I HAVE IS THAT IT  
3 IMPLIES SELF-DEFENSE. ~~THE PROBLEM IS THAT IT~~

~~THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT~~  
~~IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE.~~  
~~THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT~~  
~~IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE.~~  
~~THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT~~  
~~IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE.~~

10 WITH A PERSON STANDING THEIR GROUND FOR SELF-DEFENSE,

~~THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT~~

12 ~~IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE.~~

13 THE COURT: WELL, THE PROBLEM IS THEY'RE

14 VIEWING ALL THE EVIDENCE AS IT APPLIES BOTH TO THE

~~THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT~~

16 ~~IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE.~~

17 ~~THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT~~

18 ~~IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE.~~

19 ~~THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT~~

20 ~~IMPLIES SELF-DEFENSE. THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE.~~ I'LL DO THE CONCLUDING INSTRUCTIONS AND THEN

21 RECESS.

22 MR. ADAIR: PROBABLY FOR THE RECORD, I SHOULD

23 BRING A MOTION FOR A MISTRIAL.

24 THE COURT: MOTION'S DENIED.

25 ALSO, THE RECORD SHOULD REFLECT THAT BEFORE

26 STARTING HIS ARGUMENT, MR. ADAIR WANTED TO UNSEAL THE

27 EXHIBIT, WHICH IS THE TELEPHONE. AND I DENIED THAT

28 REQUEST. I FEEL, NUMBER ONE, ~~THE PROBLEM IS THAT IT IMPLIES SELF-DEFENSE.~~



1 AND IT HAS CONTAMINANT ON IT, INCLUDING BLOOD. AND THE  
2 JURY -- IT'S A CLEAR PLASTIC BAG. THEY CAN SEE VERY  
3 CLEARLY WHAT IT IS. AND DEMONSTRATING IT'S USE, I  
4 THINK, MR. ADAIR HAS VERY EASILY MADE HIS POINT. AND  
5 THE JURY CAN EXAMINE THE PHONE IN THE JURY ROOM THROUGH  
6 THE BAG.

7 **MR. ADAIR:** I WAS CONCERNED ABOUT HOW I WAS  
8 GOING TO SNEAK OFF TO THE BATHROOM AND THOROUGHLY WASH  
9 MY HANDS.

10 **THE COURT:** SO NOW YOU DON'T HAVE TO.  
11 LET'S FINISH THE INSTRUCTIONS AND THEN WE'LL  
12 GET THE JURY OUT.

13 (THE COURT, BOTH COUNSEL, AND THE COURT  
14 REPORTER ENTER THE COURTROOM.)

15 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN  
16 COURT IN THE PRESENCE OF THE JURY:)

17 **THE COURT:** ALL RIGHT.

18 LADIES AND GENTLEMEN, I HAVE A FEW CONCLUDING  
19 INSTRUCTIONS FOR YOU AND THEN YOU WILL BE SENT OUT TO  
20 THE JURY ROOM FOR DELIBERATIONS.

21 YESTERDAY I READ TO YOU FOR ABOUT 50 MINUTES  
22 OF THE INSTRUCTIONS. OBVIOUSLY, THEY WERE LENGTHY. ~~AND~~

~~23 NONE OF THEM ARE MORE IMPORTANT THAN THE OTHER. YOU~~  
~~24 NEED TO CONSIDER EACH AND EVERY ONE OF THESE INSTRUCTIONS~~  
~~25 ON YOUR DEFENSE AND THE CHARGE AGAINST YOU.~~

26 THEORY. I HAVE JUST ONE INSTRUCTION I WANT TO STATE AT  
27 THIS TIME TO CLARIFY THE LAW ON ONE POINT AND THEN I  
28 WILL GIVE YOU YOUR CONCLUDING INSTRUCTIONS.

1 DECLARANT AT ALL BECAUSE THEY WON'T BE IN COURT. IN  
2 ESSENCE, THE POLICE OFFICER SHOULD BE PRESENT IN COURT  
3 FOR THE PEOPLE TO CROSS-EXAMINE IN THAT REGARD.

4 I HAVE A PIECE OF PAPER IN FRONT OF ME WITH A  
5 BUNCH OF OPINIONS FROM 1992, WHICH, IN ADDITION, WERE  
6 REVIEWED BY A DISTRICT ATTORNEY FROM MY OFFICE AT THAT

~~\_\_\_\_\_~~  
8 CRIMINAL OFFENSE. NOW THE DEFENSE WANTS TO BRING THEM  
9 IN AND USE THEM TO SHOW THAT THESE THINGS ACTUALLY DID  
10 HAPPEN WHEN MR. THOMAS HAS DENIED THEM, ~~\_\_\_\_\_~~  
11 CHARGES UPON THEM, AND FROM THE BEST I CAN TELL, ~~\_\_\_\_\_~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
~~\_\_\_\_\_~~  
15 ~~\_\_\_\_\_~~. IT WOULD BE AS IF SOMEONE FROM MY  
16 OFFICE WROTE THEIR OPINIONS AS TO MR. BURTON -- OR, IN  
17 ESSENCE, JUST PULL UP A BUNCH OF POLICE REPORTS IN THIS  
18 CASE WITHOUT PRESENTING ANY WITNESSES. MR. BURTON  
19 WOULDN'T HAVE ANY CHANCE TO CROSS-EXAMINE THOSE  
20 WITNESSES. BUT BECAUSE WE THINK THEY'RE RELIABLE, WE'RE  
21 GOING TO ADMIT THEM INTO EVIDENCE. ADDITIONALLY, THE  
22 FACT THAT THEY'RE USED FOR IMPEACHMENT PURPOSES FOR  
23 MS. SANDERS AND MR. THOMAS -- THE FACTS OF THE  
24 STATEMENTS COMING IN HAVE ALREADY COME IN. THE PAPERS  
25 IN WHICH THEY'RE PRINTED ON THEMSELVES DO NOT COME INTO  
26 EVIDENCE. THEY NEVER HAVE. THE PEOPLE URGES THE COURT  
27 TO STAY WITH THAT. THEY SHOULD NOT COME INTO EVIDENCE  
28 BECAUSE THEY ARE NOT EVIDENCE. THEY ARE INADMISSIBLE

1 HEARSAY.

2 REFERRING TO 1370, ~~THE COURT HAS DECIDED THAT~~

3 ~~THE COURT HAS DECIDED THAT~~, THAT CODE SECTION HAS BEEN JUST TORN

4 APART BY CRAWFORD. WE'RE NOT ALLOWED TO USE THAT --

5 THE COURT: I KNOW. BUT WE DON'T HAVE A

6 CRAWFORD ISSUE HERE.

7 MR. TROCHA: WE DO IN THE FACT THAT CRAWFORD

8 ~~THE COURT HAS DECIDED THAT~~. IT APPLIES TO ALL HEARSAY

9 STATEMENTS. THE DECLARANT HAS TO BE AVAILABLE FOR

10 CROSS-EXAMINATION. IT'S NOT JUST FOR THE DEFENDANT TO

11 CROSS-EXAMINE, BUT FOR THE PEOPLE AS WELL. WHAT'S GOOD

12 FOR THE GOOSE IS GOOD FOR THE GANDER.

13 THE COURT: WELL, THAT RAISES A GOOD POINT.

14 UNDER WHAT CONSTITUTIONAL AMENDMENT DOES

15 CRAWFORD ARISE OUT OF, THE 5TH?

16 MR. TROCHA: IT COMES OUT OF THE 5TH AND 6TH.

17 IT'S THE RIGHT TO CROSS-EXAMINE -- CONFRONT AND

18 CROSS-EXAMINE WITNESSES.

19 THE COURT: BUT I THINK THAT'S THE DEFENDANT'S

20 RIGHT.

21 MR. TROCHA: THE WAY WE READ CRAWFORD IS IF

22 THE PEOPLE CAN'T GET IT IN, ~~THE COURT HAS DECIDED THAT~~

23 IN EITHER. THERE'S NO HEARSAY EXCEPTION SOLELY FOR

~~THE COURT HAS DECIDED THAT~~

~~THE COURT HAS DECIDED THAT~~

~~THE COURT HAS DECIDED THAT~~

~~THE COURT HAS DECIDED THAT~~

~~THE COURT HAS DECIDED THAT~~

1 ~~AND COULD THEY BE EXCUSED TO THE JURY?~~

2 ~~THE COURT: THAT WOULD BE EXCUSED TO THE JURY.~~

3 ~~MR. ADAIR: YES, YOUR HONOR.~~

4 THE COURT: DO YOU HAVE ANY OBJECTION?

5 MR. TROCHA: NO.

6 THE COURT: ALL RIGHT. WHY DON'T WE DO THAT.

7 SIR, YOU'RE FREE TO GO. LET THE JURY RIGHT

8 NOW QUICKLY PASS THE PHOTOGRAPHS STARTING WITH JUROR 1,

9 AND THEN PASS THEM AROUND. THAT WILL HELP YOU BETTER

10 TRACK WHAT THE TESTIMONY HAS BEEN. AND THEN WHEN WE'RE

11 DONE WITH THAT, WE'LL TAKE OUR AFTERNOON RECESS. AND

12 DON'T DISCUSS THE EXHIBITS AT THIS TIME. YOU'LL HAVE A

13 CHANCE BACK IN THE JURY ROOM.

14 ~~(DEFENDANT'S EXHIBITS C, D, AND E WERE~~

15 ~~\* RECEIVED AND PUBLISHED TO THE JURY.)~~

16 THE COURT: WHILE THEY'RE DOING THAT, LET ME

17 SEE BOTH COUNSEL AT SIDEBAR ON A SCHEDULING MATTER.

18 (BENCH CONFERENCE, NOT REPORTED.)

19 THE COURT: ALL RIGHT. ALTERNATE JUROR 1, YOU

20 CAN HAND THOSE TO DEPUTY MITCHELL. AND AT THIS TIME

21 WE'LL HAVE THE JURORS TAKE THEIR BREAK. WE HAVE A LEGAL

22 ISSUE TO DEAL WITH AS WELL AS TAKE OUR BREAK. SO I'M

23 GOING TO HAVE YOU IN RECESS FOR ABOUT 20 MINUTES.

24 REASSEMBLE OUTSIDE THE DOORS IN 20 MINUTES AND WE'LL

25 RESUME. DON'T DISCUSS THE CASE WITH ANYONE. DON'T FORM

26 ANY OPINIONS.

27 (AT 2:35 P.M. THE JURY WAS EXCUSED AND THE

28 FOLLOWING PROCEEDINGS WERE HAD:)

0128

~~It is stated that~~

~~It was ruled by Judge Proctor at the 1995~~  
~~hearing that the E.C. Police Department in violation~~  
~~of defendant's 4th amendment rights unlawfully~~  
~~entered the home of defendant and illegally seized~~  
~~and taken into custody defendant and his family~~  
~~in fact an unlawful entry and unlawful search~~  
~~and seizure by the E.C. Police Department.~~

argument

Cal 9 Cal The fourth amendment rather than the Fourteenth  
 amendment addresses pretrial deprivations of liberty  
 U.S.C.A. Const. Amends 4, 14. *Hallbraith v. County of Santa Clara* 307  
 F.3d 1119.

Cal 9 Cal 2003 In evaluating a custodial arrest executed by  
 state officials, federal courts must determine the  
 reasonableness of the arrest in reference to state  
 law governing the arrest. *Bingham v. City of Manhattan Beach*  
 341 F.3d 939

Cal 9 Cal 2003 To evaluate claims of unreasonable  
 seizures and detentions in the course of an arrest,  
 investigatory stop, and other seizures of an individual,  
 a court applies an objective reasonableness standard  
 U.S.C.A. Const. Amend. 4

Cal 1963. Information too vague and from too  
 untested a source to permit judicial officers to accept  
 it as probable cause for arrest warrant is  
 insufficient information upon which to base  
 arrest without warrant. Fed Rules Crim. Proc. rules  
 3, 4, 18 U.S.C.A. Const. amend 4. *Wong Sun v. U.S.*  
 Cal 9 Cal 2003 It is a violation of Miranda to  
 question an individual who is in custody after he has  
 requested counsel. U.S.C.A. Const. Amend 5 *Shant v. Woodford*,  
 279 F.3d 1121 as amended.

end

20 ALSO, ON AUGUST 18TH TRIAL WAS CONTINUED TO  
21 OCTOBER 25TH, AND THEN AT A FURTHER READINESS HEARING ON  
22 OCTOBER 13TH THE TRIAL DATE WAS ONCE AGAIN CONTINUED AND  
23 RESET FOR DECEMBER 6TH OF THIS YEAR, WHICH IS STILL THE  
24 PRESENT TRIAL DATE...



argument - 4th amendt violation suppression motion. GINO

U.S. Cal 1975. Because of importance of governmental interest in combating illegal entry of aliens at the border the minimal intrusion of a brief stop, and the absence of practical alternative for policing the border, when an officer's observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the United States, he may stop the car briefly and investigate the circumstances that provoke suspicion, but the stop and inquiry must be reasonably related in scope to the justification for their initiation and the officer may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause. Immigration and Nationality Act § 274(a)(2), 8 U.S.C.A. § 1324(a)(2)

U.S.C.A. Const. Amend 4 U.S. Cal Const. amend 4 U.S. v. Brignoni-Ponce 95 S.Ct. 2514, 422 U.S. 873, 45 L.Ed. 2d 607

U.S. Cal 1963. Information too vague and from too distant a source to permit judicial officer to accept it as probable cause for arrest without warrant. Fed. Rules Crim. Proc. rules 3, 4, 18 U.S.C.A. Const. amend 4 Wong Sun v. U.S.

CA 9 Cal 5000. Government failed to show that connection between unlawful traffic stop and search of car was sufficiently attenuated to dissipate the taint caused by the illegality, and thus cocaine seized in search should have been suppressed as "fruit of the poisonous tree" where after stopping car, officer noticed defendant lying in back seat without seat belt, officer continued to question occupants of car even after being informed that single license plate was lawful, officer called for back up and asked for consent to search, after receiving conflicting answers to his questioning a drug sniffing dog then alerted to drugs in trunk, and officers began their search there, finding and seizing cocaine U.S. 4 amendt. U.S. v. Foppe 993 F.2d 1441



0137

Argument

U.S. Cal 1971 Subjective good faith belief would not in itself justify either arrest of person mistakenly believed to be person police had probable cause to arrest or search of apartment in which arrest took place.

Hill v. California 915 Ct. 1106, 401 U.S. 797  
281, Ed. 2d. 484

U.S. Cal 1963 Quantum of information which constitutes "probable cause" - evidence which would warrant a man of reasonable caution in belief that felony has been committed must be measured by facts of particular case in which legality of arrest is questioned  
Wong Sun v. U.S. 83 Ct 407.

Absence or denial of Counsel

U.S. Cal 1966 Independent of any other constitutional proscription, preventing attorney from consulting with client is violation of Sixth Amendment right to assistance of counsel and excludes any statement obtained in its wake U.S. Cal. Const. amend 6. Miranda v. Arizona 863 Ct 1603, 384 U.S. 436.

U.S. Cal 1966 Presence of counsel in case presented, would have been adequate protective device necessary to make process of police interrogation conform to dictates of privilege. His presence would have insured that statements made in government-established atmosphere were not product of compulsion U.S. Cal. Const. amend. 5, 6.

ca. 9. Cal. 2003, The Prosecution's failure  
to disclose favorable evidence violates  
due process when the evidence is  
material. U.S.C.A. Const. Amend 4.

Belmontes v. Woodford, 350 F. 3d 861  
rehearing and rehearing denied 359 F. 3d 1079

ca. 9 Cal 2003 Suppression of material evidence  
by prosecution results in due process  
violation regardless of whether there is  
good faith on prosecutions part. U.S.C.A.  
Const. Amends. 5, 14.

Hall v. Director of Corrections 343 F. 3d 976  
C.A. 9 Cal) 2003 When potentially exculpatory  
evidence is destroyed, the government  
violates a defendant's right to due process  
if the unavailable evidence possessed  
exculpatory value that was apparent  
before the evidence was destroyed, and  
is of such a nature that the defendant  
would be unable to obtain comparable  
evidence by other reasonably available  
means. U.S.C.A. Const Amend 5.

U.S. v. Rivera-Relle 333 F. 3d 944

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